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Appeal from Circuit Court, Russell County.

Suit by W. F. Clayborn and others against the Camilla Red Ash Coal Company, Incorporated and others. From decree denying relief, plaintiffs appeal. Reversed.

*G. B. Johnson*, of Honaker, and *S. H. & Geo. C. Sutherland*, of Clintwood, for appellants.

*Bird & Lively*, of Lebanon, *McClagherty*, *Scott & Richmond*, of Bluefield, for appellees.

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WHITE SEWING MACH. CO. *v.* GILMORE FURNITURE CO.<sup>1</sup>

Nov. 18, 1920.

[105 S. E. 134.]

**1. Principal and Agent (§ 148 (4)\*)—Seller Responsible for Fraud of Agent Despite Statement that Only Claims in Written Order Would Be Recognized.**—Where an order given for sewing machines under fraudulent representations of the seller's agent stated that no claim between the seller and its buying dealer would be recognized except such as was embraced in written orders, the seller was nevertheless responsible for the fraudulent methods of its agent, relied on by the buying dealer at the time of the sale.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 274.]

**2. Sales (§ 52 (1)\*)—False Representations to Buyer Presumed to Have Been Relied on by Him.**—While the false representations relied on by a buyer to escape the building effect of the contract of sale must be relied on by him at the time the contract is entered into, when the seller has made a false representation which would naturally induce a buyer to contract on its faith, it will be inferred the buyer was induced thereby to contract, and he need not show reliance by him, but the seller, to discredit the inference, must either prove that the buyer knew that the representation was false, or show by his conduct he relied on his own judgment.

[Ed. Note.—For other cases, see 17 Va.-W. Va. Enc. Dig. 875.]

**3. Appeal and Error (§ 231 (3)\*)—Court Will Not Search for Objectionable Portions of Testimony Partly Admissible.**—Certificate showing in general terms that counsel objected to the introduction of evidence consisting of 15 questions and answers is insufficient to sustain objections to the admission of such evidence, as the Supreme Court will not endeavor to discover the objectionable portions of testimony partly admissible at least.

**4. Evidence (§§ 122 (2), 443 (2)\*)—Personal Guaranty Signed by Fraudulent Selling Agent Admissible as Res Gestæ, Not Varying**

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

**Written Order.**—In an action for the price of sewing machines defended by the buying dealer on the ground the sale was induced by misrepresentations of the seller's agent, personal guaranty of the fraudulently represented selling scheme of the seller, signed by its agent, held admissible as part of the *res gestæ*, not being inadmissible as an effort to vary the written contract of sale, specifying that no claims other than those embraced therein would be recognized, but being an independent obligation of the agent.

[Ed. Note.—For other cases, see 11 Va.-W. Va. Enc. Dig. 908.]

**5. Appeal and Error (§ 1050 (1)\*)—Erroneous Admission of Personal Guaranty of Plaintiff Seller's Agent Harmless to It.**—In an action for the price of sewing machines, defended by the buying dealer on the ground the sale was induced by misrepresentations of the seller's agent, admission of personal guaranty of the selling scheme of the seller outlined by its fraudulent agent, if erroneous as varying the written order for the machines, held harmless to plaintiff seller.

**6. Evidence (§ 376 (6)\*)—Leaves from Ledger of Mercantile Concern Admissible under Authentication of General Manager Who Did Not Make Entries Himself.**—In an action for the price of sewing machines, defended on the ground of fraud on the part of the seller's agent, pertinent leaves of the loose-leaf ledger of the buyer company held admissible when properly identified and authenticated by its president and general manager, though the entries relative to the transactions in suit were made by a number of bookkeepers, two of whom the president named, both living in the state, and one within the immediate jurisdiction of the trial court.

[Ed. Note.—For other cases, see 5 Va.-W. Va. Enc. Dig. 303.]

**7. Evidence (§ 354 (10)\*)—Ledger Sheets as Amplified by Reference to Other Books Admissible.**—In an action for the price of sewing machines, defended for fraud of the seller's agent, ledger sheets of the buyer company duly authenticated by its president and general manager held admissible with additions made to them from cash-book and journal to explain the payments shown originally by dates and amounts of debit and credit.

[Ed. Note.—For other cases, see 5 Va.-W. Va. Enc. Dig. 303.]

**8. Evidence (§ 354 (14)\*)—Statements Made up from Books Showing Work of Salesmen Admissible.**—In an action for the price of sewing machines, defended for fraud of the seller's agent, statements as to the work of each salesman employed in disposing of the machines, made up from his books, etc., were admissible.

[Ed. Note.—For other cases, see 5 Va.-W. Va. Enc. Dig. 303.]

**9. Fraud (§ 65\*)—Instruction on Measure of Damages for Misrepresentation of Price Not Misleading.**—In an action for the price of

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

sewing machines, defended for fraud of seller's agent, instruction that the measure of damages for misrepresentation of the price at which such machines had been sold was the difference between the price at which they had been sold and the price paid, though not as clear as it 'should have been, held not erroneous as tending to mislead; it in substance telling the jury that the measure of damages was the difference between the smaller price and the price fixed in the contract with the buyer.

**10. Fraud (§ 59 (2)\*)—Measure of Damages Difference between Value of Goods and Value Had Misrepresentations Been True.**—In an action for the price of sewing machines, defended for fraud of seller's agent, instruction that the measure of damages for false representations regarding other sales, and regarding the assembling of a corps of honest trained salesmen for the buying dealer, was the difference between the value of the machines had the representations been true, and their value under actual conditions, was accurate.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 42, 43.]

**11. Fraud (§ 62\*)—\$2,850 Recovery by Buyer of 150 Sewing Machines for Misrepresentations of Seller's Agent Not Excessive.**—Verdict of \$2,850 awarded the buyer of 150 sewing machines under fraudulent misrepresentations of the seller's agent as to the seller's assistance in disposing of them, etc., held not excessive; the buyer having spent much money and time in endeavoring to sell the machines, and having certainly incurred a loss.

Appeal from Circuit Court, Albemarle County.

Action by the White Sewing Machine Company against the Gilmore Furniture Company. To review judgment for defendant, plaintiff brings error. Affirmed.

*C. W. Allen*, of Charlottesville, *Saml. A. Anderson* and *Allen G. Collins*, both of Richmond, and *White & Long*, of Charlottesville, for plaintiff in error.

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BOWMAN *v.* VIRGINIA STATE ENTOMOLOGIST.

Nov. 18, 1920.

[105 S. E. 141.]

**1. Agriculture (§ 1\*)—Eminent Domain (§ 2 (1)\*)—Cedar Rust Law for Protection of Orchards Valid Exercise of Police Power.**—The Cedar Rust Law, providing for the destruction of red cedar trees to prevent infection of adjacent apple orchards, held valid as enacted by the police power of the state for the protection of the public in-

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.